

REMARKS

After entry of this amendment claims 32-39, 42-46, 52-56 and 59-79 will be pending in this application, with claim 32 amended and claims 72-79 added. The amendment to claim 32 addresses an antecedent basis issue. Support for the new claims may be found through the specification and the claims as filed. No new matter has been added.

The Applicants thank the Examiner for her acknowledgement that claims 61-71 are allowed as written.

Applicants respectfully request clarification on the status of claim 36. The Examiner has not specifically rejected the claim nor has the Examiner specifically indicated that the claim contains allowable subject matter.

The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

By amending the application, the Applicants do not concede that the patent coverage available to them would not extend as far as the original claim. Rather, Applicants reserve the right to file a continuation application to pursue the breadth of the claims as filed. Applicants believe that the Examiner has not made a sufficient showing of inherency of the teachings of the asserted prior art, especially given the lack of teachings in the cited references of the properties that Applicants have recited in their claims.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

Rejection under 35 U.S.C. §102(e)

The Examiner rejected claims 32-35, 37-39, 42-44, 46, 52-56 and 60 under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 7,040,041 to White et al. ("White"). This rejection is traversed.

The Examiner has failed to make a prima facie case of anticipation for claims 32-35, 37, 46 and 52-56. First, the Examiner has failed to provide factual support for the rejection and, second, the Examiner has failed to provide a reasonable interpretation of the present claim language.

First, while the Examiner asserted that White shows each element of the claimed invention, the Examiner provides no factual support for this assertion. In particular, the Examiner does not cite where in White the Examiner finds support for the following claim elements:

- the conduit extends across at least a portion of a seat portion of the insert (claim 32);
- ambient air drawn through the flow control layer and temperature conditioned air drawn through the conduit are mixed within the insert (claim 32);
- the at least one conduit is located within a sealed edge of the insert (claim 33);
- the at least one conduit is attached to the insert along at least a portion of the length of the conduit (claim 34);
- the at least one conduit is located underneath the flow control layer relative to the occupant (claim 35);
- the thermoelectric device is fluidly connected to the spacer via the at least one flow hole of the conduit and the at least one ventilation hole of the flow control layer (claim 37);
- the blower and the TED are connected to the insert at an extension of the insert (claim 46);
- the conduit is located along an edge of the seat portion of the insert (claim 52);
- the conduit is located along an edge of an extension of the insert (claim 53);
- the conduit extends into the seat portion of the insert (claim 54);
- the conduit is held within the insert or formed as part of the insert (claim 55); and
- the conduit is located in the plane of the insert (claim 56).

Because of this lack of factual support for the Examiner's assertions, no sound conclusions can be drawn by the Examiner from these assertions. Thus, the Examiner has not shown how White discloses these elements.

Second, in addition to obscuring the Examiner's interpretation of what White discloses, the lack of citations also obscures the Examiner's interpretation of the present claim language. The lack of citations obscures the Examiner's claim interpretation to the point of providing no interpretation at all. By definition, an

absent claim interpretation cannot be a reasonable interpretation, as the Examiner is required to provide.

For at least these reasons, the Applicants respectfully assert that the Examiner has failed to make a prima facie case of anticipation of claims 32-35, 37, 46 and 52-56 and request that the rejection of these claims be withdrawn. In addition, the Examiner has failed to make a prima facie case of anticipation for the remaining claims which depend from claim 32; namely, claims 38, 39, 42-44 and 60. Applicant request that the rejection of these claims also be withdrawn.

Rejection under 35 U.S.C. §103(a)

The Examiner rejected claims 45 and 59 as obvious over White in view U.S. Patent No. 6,189,966 to Faust et al. ("Faust"). This rejection is traversed. The Examiner has not made a prima case of obviousness for these claims for essentially the same reasons stated above with regard to claim 32. Without factual support for how White discloses the claim elements and without a claim interpretation, the Examiner has not shown how each claim element is shown in the references nor has the Examination shown a motivation to combine the references. For at least these reasons, the Applicants respectfully request that the rejection be withdrawn.

CONCLUSIONS

In view of Applicants' remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (319) 594-2200.

If for some reason Applicants have not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge Deposit Account No. 50-1097 for any fee which may be due.

Date: January 12, 2007



Christopher J. Voci
Registration No. 45,184
Dobrusin & Thennisch PC
29 W. Lawrence Street, Suite 210
Pontiac, MI 48342
319-594-2200
cvoci@patentco.com
Customer No. 25,215